Flexible Pavement Associated Drainage System And Ancillary Works at Paya Lebar Airbase, Contract 1B, Singapore" and that they had subcontracted the works to Great Bambus (Pte.) Ltd., which in turn sub-contracted the works to Shinju, and that it was Shinju which sub-contracted the works to the plaintiffs. That is an internal matter between the defendants and its associate or affiliated companies; so far as the plaintiffs are concerned, they made the agreement of May 23, 1984, with the defendants and no one else. There was not the slightest doubt as to who the parties were to this agreement. Secondly, the defendants relied on the cheques drawn by Shinju in payment to the plaintiffs, and on the cheque vouchers and ledgers of Shinju. That again is an internal matter, and so far as the plaintiffs are concerned, they were at liberty to accept, and they did accept, cheques tendered in payment of the amounts owed irrespective of whether such cheques were drawn by the defendants or others. Lastly, the defendants said that in another action the plaintiffs claimed against Shinju. That action seems to me to be an entirely different matter and has no bearing on the matter in this action.

In the result, I could come to no other conclusion than that that the defence raised by the defendants was a sham and adopted for the purpose of delay and was hopelessly unsustainable.

Appeal dismissed.

Solicitors: *Haridass Ho & Partners; Tan See Swan & Co.*

AUSTRALIAN MASTER BUILDERS CO. PROPRIETARY LTD. v. PAL-ASIAN SERVICES

[A.C.J. (Thean J.) June 23, 1987]

[Singapore – Civil Suit No. 1747 of 1985]

Contract – Sale of goods – Delivery of wrong goods – Claim for loss of further business – Whether damages allowed – Whether principles of Hadley *v.* Baxendale *applied.*

By a contract evidenced by an invoice dated June 22, 1984, the plaintiffs in this case sold and delivered to the defendants a quantity of grout for $42,750 of which a balance of $27,799.60 was unpaid by the defendants. Thereafter, by another contract as evidenced by an invoice dated July 20, 1984 (the second contract), the plaintiffs agreed to supply to the defendants a further quantity of grout. Unfortunately, the wrong goods were delivered to the defendants for shipment to their sub-purchaser in Indonesia. Upon discovering this, the plaintiffs immediately requested the defendants to return those goods, agreed to reimburse all expenses incurred and offered to despatch the grout as contracted. The defendants, however, rejected that offer and cancelled the order for the grout.

On February 23, 1985, the plaintiffs instituted the present action against the defendants claiming for the balance sum of $27,799.60 due under the first contract. The defendants counterclaimed for damages for breach of the second contract by the plaintiffs. Both applications for summary judgments were heard before the Senior Assistant Registrar. Judgment for the defendants was assessed at $49,313.73.

One of the items of loss which was asked for in the assessment of damages was the loss of further business with an Indonesian purchaser of the defendants. On this item, the Assistant Registrar awarded a sum of $30,000. The plaintiffs appealed against this assessment.

The defendants claimed that the loss of this order by the defendants was one ordinarily and naturally within the contemplation of the parties as a consequence of the breach of the second contract by the plaintiffs: *Hadley* v. *Baxendale.*(1)

Held, allowing the appeal: (1) the defendants had not discharged the burden of proving that the loss amounted to $30,000, and on that ground alone, the award could not be supported;

(2) on the facts, the loss of the defendants could not have been within the contemplation of the parties at the time of the contract.

Cases referred to:

(1) *Hadley* v. *Baxendale* (1854) 9 Exch. 341; 156 E.R. 145.

(2) *GKN Centrax Gears Ltd.* v. *Matbro Ltd.* [1976] 2 Lloyd's Rep. 555.

APPEAL FROM REGISTRAR.

David Arthur Mitchell for the plaintiffs.
Mansur Hussain for the defendants.

Cur. Adv. Vult.

Thean J.: By a contract as evidenced by an invoice dated June 22, 1984 ("the first contract"), the plaintiffs sold and delivered to the defendants a quantity of grout for $42,750 of which a balance sum of $27,799.60 was unpaid by the defendants. Thereafter, by another contract as evidenced by an invoice dated July 20, 1984 ("the second contract"), the plaintiffs agreed to supply to the defendants a further quantity of grout, but, unfortunately, in purported performance of this contract wrong goods were delivered to the defendants

for shipment to their sub-purchaser in Indonesia. Upon discovering this, the plaintiffs immediately requested the defendants to return those goods, agreed to reimburse all expenses incurred and offered to despatch the grout as contracted. The defendants, however, rejected that offer and cancelled the order for the grout.

On February 23, 1985, the plaintiffs instituted the present action against the defendants claiming for the balance sum of $27,799.60 due under the first contract. The defendants counterclaimed for damages for breach of the second contract by the plaintiffs. Both the plaintiffs and the defendants had recourse to Order 14 of the Rules of Supreme Court for summary judgments: the plaintiffs applied for final judgment for the amount claimed and the defendants applied for judgment for the amount counterclaimed. Both the applications were heard on January 20, 1986, before the Senior Assistant Registrar, and he granted to the defendants interlocutory judgment against the plaintiffs for damages to be assessed and gave leave to the plaintiffs to enter final judgment against the defendants for the amount claimed and ordered a stay of execution of the judgment until the damages awarded to the defendants had been assessed. The assessment of damages came on for hearing on November 13, 1986, and damages totalling a sum of $49,313.73 were assessed by the Assistant Registrar. One of the items of loss which was asked for in the assessment of damages was the loss of further business with an Indonesian purchaser of the defendants and on this item, the Assistant Registrar awarded a sum of $30,000. Against the assessment of this item, this appeal was brought and at the conclusion of the hearing of the appeal, I allowed it with costs and reduced the amount of damages awarded by $30,000.

Before the Assistant Registrar, the defendants relied on a bundle of exhibits, marked "LNY 5," annexed to the Affidavit of Lai Nai Yain, a director of the defendants, affirmed on October 19, 1985, and filed in support of the defendants' application for summary judgment. Amongst the exhibits are three documents: (i) a copy of the purchase order dated August 22, 1984, issued by Tokyo Engineering Corporation on behalf of P.T. Pupuk Iskander Muda ("Pupuk") to the defendants for the purchase of a quantity of heavy duty pallet racks; (ii) a copy of the letter to the defendants dated August 29, 1984, from a company known as P.T. Rekayass Industri ("Rekayasa") stating that they were disappointed and annoyed with the delivery of the wrong grout and that they were worried that the defendants would repeat the same error on the delivery of the heavy duty pallet racks and that therefore they cancelled the order for those racks, and (iii) a computation of the loss arising from the cancellation of such order. Apart from these exhibits, no other evidence was adduced. All that was before the Assistant Registrar and before me amounted to no more than this. The defendants claimed an item of loss of business said to amount to $30,000: see particulars in the counterclaim. A computation as submitted on behalf of the defendants showed that the net profit that was lost amounted to $68,000, and no witness was called to prove this computation. Then, the copy of the letter from Rekayasa was relied on, and counsel for the defendants said that he quantified the amount of $30,000, and no basis was shown as to how he arrived at that quantification. In my view, clearly the defendants had not discharged the burden of proving that the loss amounted to $30,000, and on that ground alone, the award could not be supported.

It is not clear to me how Rekayasa became empowered to cancel the order for the quantity of heavy duty pallet racks, which order was placed by Tokyo Engineering Corporation on behalf of Pupuk. It is not apparent on the face of Rekayasa's letter of August 29, 1984, or elsewhere that that company did so and was authorised to do so, on behalf of Pupuk. Nor is it apparent that the cancellation was made with the consent or knowledge of Pupuk. However, presumably they were connected or affiliated with each other; that is the inference I draw from the documents. Secondly, it is significant that the order for the pallet racks was issued on August 22, 1984, or thereabout; the copy of the order bears the following: "ISSUE DATE 1984-08-22." As of that date the plaintiffs had already committed a breach of the second contract made with the defendants: the wrong goods were delivered to the defendants for shipment to their Indonesian purchaser on or about July 20, 1984. That was known to Rekayasa in early August, 1984, as evidenced by the telex to the plaintiffs on August 1, 1984 cancelling the order for the grout which had not been delivered: see Exhibit "LNY 5" annexed to the Affidavit of Lai Nai Yain affirmed on August 30, 1985. That telex was despatched in the name of Ir. Winardi Widjaja, in whose name also the letter of August 29, 1984 of Rekayasa was written. It seems to me extremely odd that Pupuk, with whom Rekayasa must have some connections, should, on August 22, 1984, through its agent, place an order with the defendants for the

purchase of heavy duty pallet racks, and then on August 29, 1984 Rekayasa (presumably on behalf of Pupuk) cancelled the order, on the ground that Rekayasa was "worried" that the defendants "would repeat the same error." In the circumstances, that letter of August 29, 1984 of Rekayasa was suspect, and hardly any weight could be given to it.

I now turn to the principle relied upon in support of the claim for such a loss. It was submitted on behalf of the defendants that the loss of this order by the defendants was one ordinarily and naturally within the contemplation of the parties as a consequence of the breach of the second contract by the plaintiffs: a loss falling within the first branch of the rule in *Hadley* v. *Baxendale.*[1] The short answer to this argument is that, on the facts, such a loss could not have been within the contemplation of the parties at the time of the contract. First, the contract in which the plaintiffs committed a breach was one for the sale of grout, and the order said to have been lost was for the purchase of heavy duty pallet racks – entirely different goods, unrelated to the grout contracted to be sold to the defendants. Secondly, the purchase order of Pupuk for the heavy duty pallet racks was placed with the defendants after the breach of the second contract by the plaintiffs and could not possibly had been contemplated by the parties at the time that contract was made.

The case of *GKN Centrax Gears Ltd.* v. *Matbro Ltd.*[2] was cited on behalf of the defendants in support. There, the plaintiffs manufactured drive axles and supplied them to the defendants who made fork lift trucks, and the axles were incorporated into the trucks. The trucks supplied by the defendants broke down and the defendants alleged that that was due to the defective axles supplied by the plaintiffs. The plaintiffs were owed a substantial sum for the supply of the axles and brought an action to recover the amount; the defendants counterclaimed for losses which they had suffered. The Court of Appeal in England held that the defendants were entitled to damages for loss of orders from their customers. Lord Denning M.R. said, at p. 574:

"That principle applies to loss of repeat orders as well as to other losses. Applying the principle here Centrax knew as well as anybody the purpose for which these axles were required. It must have been within the contemplation of the parties that if these axles failed, it would cause much damage to the goodwill of Malbro. Customers would be disappointed and would not order any more. It seems to me that the arbitrator was entirely correct. Loss of repeat orders from existing customers can be recovered where that is naturally within the contemplation of the parties as a consequence of the breach."

Stephenson L.J. said, at p. 577:

"... Such loss of custom from customers to whom resales are contemplated, is not, in my opinion, a special circumstance within the second rule in *Hadley* v. *Baxendale*, but a direct and likely result of the use to which Centrax knew their axles were to be put, and arises naturally according to the ordinary course of things within the first rule."

It seems to me clear that the basis for awarding the loss of repeat orders in that case was that the manufacturers knew that the axles supplied by them would be incorporated into the trucks built and sold by the defendants to the latter's customers and that it was within the contemplation of the parties that if the axles failed serious loss in sales would be occasioned to the defendants. Such was not the case here. As I have demonstrated above, the loss of the purchase order placed by Pupuk could not have been within the contemplation of the parties at the time of the second contract.

For all these reasons, the appeal must succeed.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Singa Retnam.*

HONG KONG TEAKWOOD LTD. v. HYUNDAI ENGINEERING & CONSTRUCTION CO. LTD.

[O.C.J. (Thean J.) June 27, 1987]

[Singapore – Originating Summons No. 540 of 1987]

Contract – Sub-contract – Performance bond – Letter of guarantee – Interim injunction to restrain defendants from enforcing guarantee against bank – Application to discharge injunction – Balance of convenience.

Practice and Procedure – Interim injunction taken out ex parte – Application to discharge injunction allowed – Balance of convenience.

The defendants were the main contractors in the building of a hotel, "The Oriental." The plaintiffs were a sub-contract of the defendants. By clause D of the sub-contract the plaintiffs contracted to provide a performance bond for the duration of the sub-contract and at their own expense. In pursuance of this clause a letter of guarantee from Bank of America N.T. and S.A. ("the Bank") dated January 9,